IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 483 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Versus

SHANABHAI BABUBHAI PARMAR

Appearance:

MR MEHUL H RATHOD for Petitioner No. 1

MR NIKHIL D JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/07/2004

ORAL JUDGEMENT

1.0 By this petition the petitioner has challenged the judgement and award dated 28.1.2002 passed by the Labour Court, Anand, in Reference (LCA) No.218/92 whereby the Labour Court directed the petitioner to reinstate the respondent workman with continuity of service, but without bakcwages.

2.0 According to the petitioner, the respondent workman was appointed as a casual labour on daily wage basis and assigned the work of Chowkidar at Tube Well No.7 of Kathana till the regularly selected candidate is made available by communication No.622 of 1984 dated 11.4.1984. Thereafter, in view of the availability of the regular worker, the respondent workman was relieved as watchman in terms of the appointment order, more particularly clause (b) of the order wherein it has been clearly stated that the appointment is for 2-3 months or till the regular workman is deputed from the Head Office or other operator is appointed by the petitioner Corporation. It was also made clear that after two months the services of the workman would be automatically terminated.

2.1 The respondent workman raised a dispute which was numbered as Reference (LCN) No.754/1986 in the Labour Court at Nadiad. The said Reference was partly allowed by exparte judgement and award dated 26.4.1994. The petitioner, therefore, filed Misc. Application No.14/94 before Labour Court, Anand, for setting aside the exparte judgement and award. The said application was allowed and thereafter after hearing the parties the Labour Court passed impugned judgement and award as mentioned above.

3.0 Mr. Mehul Rathod for the petitioner submitted that the judgement and award passed by the Labour Court is contrary to the provisions of law and the Labour Court has not considered the contentions raised by the petitioner Corporation. He submitted that in view of the appointment order the respondent workman was covered under section 2(oo)(bb) of the Act and therefore it is not a retrenchment. He further submitted that the Corporation was not required to follow the provisions of section 25F.

3.1 Mr. Rathod submitted that engagement of workman was on contract basis on daily wages as a chowkidar for watching tube well till the availability of regularly selected candidate and after the regularly selected candidate was available, the respondent workman was not engaged. Since the non-engagement of the workman from work is excluded from the definition of retrenchment, the workman is not entitled to any benefit accrued under section 25F of the Act.

3.2 Mr. Rathod further submitted that the workman has not produced any evidence to show that he was in the employment continuously for a year and has worked for 240

days as defined under section 25B of the Act. According to the learned counsel, even in the statement of the claim the respondent workman has clearly stated that his non-engagement in service is illegal on the ground that he was arbitrarily terminated and in his place other fresh person was engaged for performing the same work which was performed by him. Thus, the entire basis of the claim of the respondents is in violation of section 25H of the Act and not in violation of section 25F of the Act and therefore the Labour Court has clearly erred in travelling beyond the scope of the claim raised by the workman.

3.3 Mr. Rathod further submitted that it is a settled position that the casual labourers on daily wage basis are engaged on the basis of need of work and the required quantum of manpower and such employees are not engaged to the posts in accordance with the rules and the concept of retrenchment cannot be stretched to such an extent to cover those employees.

3.4 Mr. Rathod lastly submitted that the Labour Court has committed an error in arriving at a conclusion that the respondent workman has completed 265 days working in a year on the ground that the initial engagement of the respondent is for a fixed period of two months with effect from 11.4.1984 to 11.5.1984. If the total period of working of the respondent as Casual Labour on daily wage basis is to be calculated, then the period of two months is to be deducted from the total number of working days (265 days) as calculated by the Labour Court. According to him the Labour Court has erred in clubbing the period of number of working days of the respondent worked under Exh.27 and the number of working days completed by the respondent as casual labour (i.e. 240 days) on daily wage basis. He, therefore, submitted that that there is total non-application of mind on the part of the Labour Court.

4.0 Mr. Nikhil Joshi for the respondent workman submitted that the respondent workman has completed 240 days in a year and therefore the mandatory provisions of section 25F is required to be followed. He has relied upon a judgement of the Apex Court in the case of S.M. Nilajkar Vs. Telecom District Manager, Karnataka, reported in AIR 2003 SC 3553. In that case the Apex Court held that the termination of employee amounts to retrenchment. He relied upon para 14 of the said judgement. However, this decision is of no assistance to the respondent workman. In that case the Supreme Court has not allowed the employer to invoke provisions of

section 2(oo)(bb) in view of the fact that there was no pleadings attracting the applicability of clause (bb). Therefore, the termination of the service of the employee was held to be retrenchment. In the present case even before the Labour Court the case of the petitioner Corporation was that the employment was contractual employment and conditional and it was only when the regular employee was made available the respondent workman was relieved.

4.1 Mr. Joshi has relied upon a decision in the case of S.M.N.Sahakari Bank Vs. Mamtaben, reported in 2002(1) GLR 755 where it has been held that even in the case of fixed term appointment orders given from time to time for period extending beyond 240 days, provision of section 25F cannot be brushed aside when order of termination is found to be case of victimisation and unfair labour practice. In the present case only one appointment order was given and and on availability of the regular workman, the respondent workman was relieved. It is not the case of the respondent workman that though work is available, he has been relieved. There are no allegations that there was any victimisation or unfair labour practice. Therefore, the aforesaid judgement also would not be of any assistance to the respondent workman.

4.2 Learned counsel relied upon a decision of the Supreme Court in the case of Executive Engineer, CPWD, Indor Vs. Madhukar Purshottam Kolharkar and Another, reported in 2000-II LLJ 1410. In the said decision the Supreme Court held that in absence of fixed term in the order of appointment, provisions of section 2(oo)(bb) of I.D.Act is not applicable. In the present case the appointment is for fixed term and on certain condition.

5.0 Mr. Mehul Rathod for the petitioner has relied upon a judgement of the Apex Court in the case of M/s Haryana State F.C.C. W. Store Ltd. Vs. Ram Niwas, reported in AIR 2002 SC 2495 wherein it has been held that when the watchman appointed to guard stock of grains stored in open area of Mandi where the term of engagement was for a specific purpose and for a specific period, his disengagement/termination of service does not amount to retrenchment and therefore the question of complying with section 25F does not arise.

6.0 There is no dispute that there was a specific clause in the appointment order of the workman and the period was limited for two months. The appointment was also conditional i.e. upto the period when the regular watchman was available. Therefore, when the engagement

was for specific purpose and for particular period and condition, there was no question of complying with section 25F of the Act. Apart from that in the cross examination the workman has admitted that he was not appointed on permanent basis. The respondent workman has not produced any evidence to establish that he was working on the permanent post. There is also no dispute that he was relieved on appointment of new watchmen who was regularly appointed. Therefore, it is a case where the appointment is for a fixed term and therefore the provisions of section 2(oo)(bb) will be attracted inasmuch as the appointment order itself stipulated a condition the the contract was terminated under the said stipulation. Therefore, the Labour Court has clearly committed an error in entertaining the application.

7.0 No other contentions are raised.

8.0 In the result, the petition is allowed. The impugned judgement and award of the Labour Court is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

9.0 However, it is directed that as and when any vacancy arises for the post of watchman, the Corporation shall offer such work to the respondent workman as per the provisions of section 25-G and H of the Industrial Disputes Act.

[K.S. JHAVERI, J.]
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